

**COMMONWEALTH OF VIRGINIA**

2004 NOV 19 P 1:02 **STATE CORPORATION COMMISSION**

**Staff Report On Proposed Rules Governing Exemptions to  
Minimum Stay Requirements and Wires Charges**

**CASE NO. PUE-2004-00068**

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**Division of Economics and Finance  
Division of Energy Regulation  
Division of Public Utility Accounting**

**November 19, 2004**

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## Introduction

On June 16, 2004, the State Corporation Commission ("Commission") initiated Case No. PUE-2004-00068 to establish rules and certain market-based pricing methodologies to implement two new provisions of the Restructuring Act.<sup>1</sup> These new statutory provisions relate to the minimum stay requirements adopted by the Commission pursuant to § 56-577 E of the Restructuring Act, and wires charges imposed pursuant to § 56-583 of the Act, as cited below:

### § 56-577 E

E. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if so, for what minimum periods, customers who request service from an incumbent electric utility pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving service from other suppliers of electric energy, shall be required to use such service from such incumbent electric utility or default service provider, as determined to be in the public interest by the Commission.

2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such utility or default providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to serve such customers. The methodology established by the Commission for determining such costs shall be consistent with the goals of (a) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

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<sup>1</sup> The Virginia Electric Utility Restructuring Act ("Restructuring Act" or "Act"), Chapter 23 (§ 56-576 *et seq.* of the Code of Virginia) as amended by Chapter 827 of the 2004 Acts of Assembly (Senate Bill 651).

3. Notwithstanding the provisions of subsection D of § 56-582 and subdivision C 1 of § 56-585, however, any such customers exempted from any applicable minimum stay periods as provided in subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any distributor required to provide default service under subdivision B 3 of § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any minimum stay period then applicable while obtaining retail electric energy at capped rates.

4. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this subsection, which rules and regulations shall include provisions specifying the commencement date of such minimum stay exemption program.

#### § 56-583

B. Customers that choose suppliers of electric energy, other than the incumbent electric utility, or are subject to and receiving default service, prior to the earlier of July 1, 2007, or the termination by the Commission of capped rates pursuant to the provisions of subsection C of § 56-582 shall pay a wires charge determined pursuant to subsection A based upon actual usage of electricity distributed by the incumbent electric utility to the customer (i) during the period from the time the customer chooses a supplier of electric energy other than the incumbent electric utility or (ii) during the period from the time the customer is subject to and receives default service until the earlier of July 1, 2007, or the termination by the Commission of capped rates pursuant to the provisions of subsection C of § 56-582.

E. 1. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § 56-579, (a) individual customers within the large industrial and large commercial rate classes of such incumbent electric utility, and (b) aggregated customers of such incumbent electric utility in all rate classes, subject to such aggregated demand criteria as may be established by the Commission, may elect, upon giving 60 days' prior notice to such utility, to purchase retail electric energy from licensed suppliers thereof without the obligation to pay wires charges to any such utility that imposes a wires charge as otherwise provided under this section.

2. Notwithstanding the provisions of subsection D of § 56-582 and subdivision C 1 of § 56-585, any such customers (i) making such election and (ii) thereafter exercising that election by obtaining retail electric energy from suppliers without paying wires charges to their incumbent electric utilities, as authorized herein, shall not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any distributor required to provide default service under subdivision B 3 of § 56-585 at the capped rates established under § 56-582.

3. Customers making and exercising such election may thereafter, however, purchase retail electric energy from their incumbent electric utilities at the market-based costs of such utility, upon 60 days' prior notice to such utility. Such

costs shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to serve such customers. The methodology established by the Commission for determining such costs shall be consistent with the goals of (a) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

4. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this subsection. Such rules and regulations shall include provisions specifying the commencement date of such wires charge exemption program and enabling customers to make and exercise such election on a first-come, first-served basis in each incumbent electric utility's Virginia jurisdictional service territory until the most recent total peak billing demand of all such customers transferred to licensed suppliers in any such territory reaches, at a maximum, 1,000 MW or eight percent of such utility's prior year Virginia adjusted peak-load within the 18 months after such commencement date, and thereafter according to regulations promulgated by the Commission.

The Commission directed the Staff to conduct an investigation and file a report proposing rules necessary to implement the minimum stay and wires charges exemption programs. The Commission further directed the Staff to convene a workgroup to assist it in its investigation. The Staff invited interested parties to participate in such a workgroup and held meetings on August 19<sup>th</sup>, September 10<sup>th</sup> and September 21<sup>st</sup>. Twenty organizations responding to Staff's invitation are listed on Attachment B. The Staff attempted to allow for a full discussion of key issues and the expression of perspectives by the work group participants. The Staff found the discussions to be informative and is appreciative of the efforts and contributions of the participants.

The Staff is concerned that the methodology to determine market-based costs for these exemption programs may be used as the precedent to determine the basis for the cost of default service in the future and believes that to do so would be a mistake. While

the method proposed for the exemption programs is reasonable for the limited load prescribed in §56-583 of the Code of Virginia ("Code"), it would be unacceptable as a pricing method for widespread default service. The proposed method may not be suitable to determine the price for future default service because a much larger portion of an incumbent utility's load likely would be subjected to the average zonal pricing that is proposed here without the protection of capped rates. Such customers would be vulnerable to the utility's ability to exercise any market power that utility may possess. The reliance of the proposed method on the short-term real-time spot market prices to the exclusion of the longer term market prices and bilateral transactions also may expose customers to a utility's ability to influence spot prices. Additionally, the specific statutes governing the determination of market based pricing for returning customers include provisions that are not reflected in the specific statutes governing the future pricing of default service. Most utilities acknowledged that the market-based cost methodology proposed here should not serve as a precedent for the pricing of default service and verbally stated there was no intention to use the results of this docket to influence the determination of costs for future default service. It appears that such an understanding among parties could, and should, be stated as part of this docket.

The Staff proposes several new independent rules applicable to the limited duration of the exemption programs. The Staff's proposed Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges, included as Attachment A, supplement the existing Retail Access Rules. In developing the proposed rules, the Staff has attempted to balance the objectives of promoting the advancement of competition, affording reasonable consumer protections, and ensuring the equitable treatment of

market participants. The following sections of the report further discuss the proposed rules and issues raised during Staff's investigation.

## **Discussion**

The following sections address the issues and concerns raised by Staff and various parties during the course of work group discussions. The proposed rules apply to the utilities imposing either a minimum stay requirement or wires charges for the limited duration of the exemption programs. The minimum stay exemption program permits a large customer with load of 500 kW or greater, pursuant to existing Retail Access Rule 20 VAC 5-312-80 Q, returning to generation service of the local distribution company, to elect (i) to stay with the utility for a minimum of 12 months to receive capped rate service or (ii) to select market-based pricing for the freedom to shop as frequently as desired. The duration of this program is the capped rate period for the respective utility.

The wires charges exemption program permits commercial and industrial customers, as well as aggregated customers in all rate classes, to avoid paying wires charges when selecting a competitive service provider by agreeing to market-based pricing upon return to generation service from the utility. The duration of this program is until the earlier of July 1, 2007, or the termination of wires charges. Customer election of this option is an up-front decision to forever waive the right to return to the utility's capped rate generation service, which may be in place for up to three and one-half years beyond the current termination of wires charges.

The proposed rules are in addition to the existing Retail Access Rules and apply to the two exemption programs previously described. Several key issues arose during work group discussions and are discussed below.

### **Administrative and regulatory process**

Parties agree that the limited duration that these exemption programs are available creates a critical timeline to develop, approve, and implement such programs. Any potential benefit to customers wishing to exercise the option to participate in these programs, particularly the wires charges exemption program, diminishes with the amount of time it takes to establish them. The amended Restructuring Act requires the Commission to provide notice and opportunity for a hearing, as well as to review any utility's plan to procure electric energy to serve such customers electing these options, prior to determining and approving the methodology to ascertain market-based costs.

A conundrum exists in that the utilities need the rules developed in this proceeding to develop their individual plans and the Commission needs to review the utilities' plans to approve the rules and associated methodology. To manage this issue and the short lead time, Staff proposes that these rules serve as the basis for the utilities' plans and seeks the Commission's review of the rules and plans simultaneously to establish these programs as quickly as possible. All parties realize the risk of potentially significant revisions to the proposed rules necessitating further changes to the utility plans, but believe this parallel review is the best way to proceed in the interest of time.

### **Applicability to Cooperatives**

One legal issue that arose during the course of the work group meetings is the applicability of the new minimum stay and wires charges exemption programs to retail electric cooperatives ("Cooperatives"). In their comments filed in response to the Commission's June 16, 2004, Order Establishing Proceeding, the Cooperatives argue the new exemption programs should not apply to them for two primary reasons, both derived

from the Cooperatives' interpretation of the new statutory language establishing these exemption programs. First, the Cooperatives argue that an incumbent electric utility's obligation to offer the new exemption programs is subject to two conditions, one of which is the transfer of management and control of an incumbent electric utility's transmission assets to a regional transmission entity ("RTE"). Since the Cooperatives do not have any transmission assets to transfer to RTEs, they argue that a necessary "threshold condition precedent to application of the programs" does not exist for the Cooperatives. In the Cooperatives' view, they must own transmission assets and they must transfer those assets to an RTE before any statutory obligation to participate in the exemption programs arises.

The Cooperatives further assert that in order to participate in the minimum stay and wires charges exemption programs, customers must agree to pay "market-based costs" if they ever return to service provided by an incumbent electric utility. The definition of "market-based costs" includes a component for "a reasonable margin," which the Cooperatives claim is inconsistent with their operations as not-for-profit organizations.

The Cooperatives therefore argue their participation in the programs was never intended by the General Assembly because they do not have any transmission assets to transfer to RTEs and because their operations as not-for-profit organizations are inconsistent with customers agreeing to pay "market based costs" including "a reasonable margin" upon their return to an incumbent electric utility.

A letter dated September 24, 2004,<sup>2</sup> from the Office of the Attorney General, Division of Consumer Counsel, states that “in our view the provisions of §§ 56-577 E 2 and 56-583 of the Code of Virginia do not require cooperatives' participation in these programs.” Accordingly, the Division of Consumer Counsel supports the cooperatives' position on this issue.

Given the statutory language creating the minimum stay and wires charges exemption programs, the Commission Staff is unable to determine whether the Cooperatives are required by law to offer these programs to their members. The Staff therefore recommends that the Commission take no action directing the Cooperatives to implement these programs until such time as the General Assembly makes it clear that the Cooperatives must offer them.

#### **Consumer education**

All parties agree that consumer education regarding these programs is of paramount importance. Comments were voiced regarding the responsible party, the clarity of the message delivered, the scope of customers to which to communicate, and the associated costs. Although competitive suppliers should reiterate the option risks to the customer, the utility is ultimately responsible to clearly communicate the availability of options and the associated risks prior to customer decisions that obligate the customer. These risks must be fully explained prior to the customer considering whether to participate in these programs.

Staff believes that the utility must advise every affected customer of each program, even though participation will be limited. The proposed rules require the

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<sup>2</sup> Letter posted at: [http://www.state.va.us/scc/division/eaf/comments\\_minimumstay.htm](http://www.state.va.us/scc/division/eaf/comments_minimumstay.htm)

utilities to provide written notice to each customer through its choice of mediums, such as bill inserts, bill message or website posting, but recognizing that it is imperative that this communication be effective in reaching each customer. The content of such vital information should be reviewed and approved by Staff prior to its release to assure a clear and consistent message. Although all utilities are affected by the minimum stay exemption program, currently only Dominion and all but one of the Cooperatives maintain wires charges. AEP has chosen to waive its annual wires charges since 2001, but has not committed to waiving any wires charges in the years 2006 and 2007.

It is necessary that customers affected by the minimum stay requirements understand their options. Such customers, upon return to their local distribution company, may accept generation service for a minimum period of time, typically one year, and be charged at currently capped rates or they may choose to take generation service from the utility at a market-based cost and be free to switch to another competitive supplier at anytime.

Additionally, it is imperative that all customers affected by the imposition of wires charges understand up-front that upon their election to participate in the wires charges exemption program, they forever give up the right to return to utility capped rate service. Such customers accepting generation service from the utility at a later time will always be charged at a market-based cost for this service. In other words, those customers will benefit by avoiding wires charges through July 1, 2007; however, they would be unable to return to capped rate generation service for the duration of the capped rate period, which could last until January 1, 2011. In short, they would be forgoing a significant consumer protection built into the Restructuring Act.

The Commission's consumer education effort should also work with the utilities to complement their activities and coordinate the release of information. Such coordination will help assure that all of Virginia's customers have the proper information to make an informed decision regarding the options and associated risks of participating in either of these programs.

Costs incurred to communicate the availability of these exemption programs and associated options and risks are costs elected by the utilities imposing such conditions on its customers. Such costs are part of implementing their business plan and are not related to procuring the electric energy to service participants at some point in the future. Staff believes communication costs should not be included as an element to determine market-based cost.

#### **Alternative process solutions**

The work group spent considerable time discussing the efforts and costs to develop and implement these two exemption programs. Most, if not all, of the utilities believe that all costs should be reflected in the market-based cost charged to customers upon election of these options. All parties shared the concerns that incurring such costs but having no customers elect to participate placed the utilities at a disadvantage. Conversely, if only a few customers choose to participate, the disproportionate share of such costs place customers at a disadvantage.

To address these concerns, the Staff initiated discussion regarding alternatives to reduce or minimize the costs of developing these programs. One obvious option that would eliminate all costs associated with these programs is for utilities to simply waive any imposed minimum stay requirements or applicable wires charges.

Another alternative, for those desiring to maintain minimum stay requirements and wires charges, is to develop a manual work-around solution rather than an extensive automated or computer intensive solution, similar in concept to that accepted by the Commission regarding competitive supplier billing in Case No. PUE-2001-00297. Since one of the major concerns regards the number of customers actually choosing to participate in these programs, such a manual process could minimize the costs while accommodating those choosing to participate. If a large number of customers choose to participate, a threshold, e.g., 100 MW, could be established to trigger development of a more refined or automated solution permitting the costs of development to be better distributed. The level of activity could be used to measure the need and timing to develop a more refined solution.

#### **Potential threshold limit of aggregated load**

Another issue addressed by the work group involves the establishment of a threshold limit applicable to aggregated load for participation in the wires charges exemption program. The law permits aggregated customers of all rate classes to participate subject to demand criteria that may be established by the Commission. During the course of discussion, all parties seemingly concluded that no such threshold was needed for aggregated customers. In general, the workgroup participants argued that the purpose of these programs is to stimulate competition, and the best way to achieve that goal is to allow as many people to participate as possible. A threshold limit would make it more difficult for competitive suppliers to aggregate sufficient load to participate and thus may serve to protect individual small consumers from any negative consequences of participation. However, if appropriate notice is provided to all

consumers, advising them that participation will result in forgoing capped rate service if they return to their utility, then no such protection is necessary. The Staff agrees with the majority of the workgroup participants that no threshold is necessary.

Subsequent to the work group discussions, AEP submitted written comments stating that a threshold of 500 kW should be established as the minimum aggregated load to be eligible for exemption from wires charges. AEP argues that:

...if the legislative intent was to have no minimum level of load requirement in order to be eligible for the wires charge exemption program, there would have been no need to separately identify individual large industrial and large commercial customers as eligible for the exemption programs on the basis of their individual load. The aggregation provision is a way to allow smaller customers a method to combine their loads to reach the level at which the legislature determined individual customers would be eligible for the wires exemption program.

The Staff understands AEP's position, but argues that the law stated that the Commission may establish a threshold, not that it must. The Staff continues to believe that such a threshold is unnecessary as long as consumers are sufficiently educated on the consequences of participation.

#### **Participation limit of wires charges**

Section 56-583 E 4 of the Act directs the utilities imposing wires charges to enable, up to a maximum limit, a portion of its customer load to switch to competitive generation supply without paying the wires charges. This maximum limit to participate in the wires charges exemption program is 1,000 MW or eight percent of the utility's prior year adjusted peak load. This section also states that this limit is to be met by customers on a first-come, first-served basis. Work group participants discussed the possibility of allocating the threshold in a variety of ways to encourage more suppliers and more customers to participate in such a program. Staff literally reads the statute to

mean that the program is open to all customers until the limit is met, but understands the rationale to parse the upper threshold to enable more than a few large customers to fully subscribe the limitation. Staff does not object to a utility proposing such a mechanism and will consider such allocation when reviewing the individual compliance plans.

The language of § 56-583 E 4 of the Act regarding the revisiting of the limit, initially appeared confusing. Work group discussion shed some light and it appears to imply that the participation limit of 1,000 MW should be revisited, and potentially adjusted upward, eighteen months following implementation, and periodically thereafter as deemed necessary by the Commission.

### **Definitions**

Although some definitions were discussed by the work group, most parties agreed that obtaining definitions suitable to everyone was a laborious and time-consuming effort. In view of the short lead-time described earlier, the work group believed it better to spend its time discussing more significant issues. Staff submits that the necessary definitions are identified or addressed within the statute, the existing Retail Access Rules, and in 20 VAC 5-312-40 of the attached proposed rules. Any party is free to discuss this topic further in its compliance plan or its comments to Staff's Report.

### **Elements of methodology**

Realizing the significant amount of discussion and concern for flexibility to address the uniqueness of each local distribution company, Staff submits within the proposed rules a section regarding the basic elements to consider when determining appropriate market-based costs. Work group participants identified additional elements the utilities wished to consider such as appropriate RTO administrative costs, appropriate

FERC and regulatory compliance costs, appropriate taxes, costs of FTR (financial transmission rights), and costs of communication. Staff does not believe that every cost identified by the utilities to implement these exemption programs should be included in determining the market-based cost to charge a customer upon its return to utility service.

Again, such proposed elements are presented for any party to discuss further in its compliance plan or its comments to Staff's Report. The inclusion of these elements, or any other elements deemed necessary by each utility, should be clearly identified and quantified in the compliance plan to be submitted by each utility.

### **Compliance plans**

Pursuant to §§ 56-577 E and 56-583 of the Act, the Commission must review the utility's plan to procure electric energy to serve any customer that chooses to participate in an exemption program and subsequently returns to the utility for generation service. Staff recommends, with support of the work group, that each utility imposing minimum stay requirements or wires charges upon its customers submit a compliance plan with the Commission.

This plan, if filed prior to the adoption of final rules by the Commission, should comport to Staff's proposed rules. Such a plan should identify the costs each utility believes will be incurred to implement these exemption programs and should describe such costs in sufficient detail to allow for adequate review. This plan should also describe in detail any unique attributes claimed by the utility to be necessarily included in its determination of market-based costs. The utility should also include an explanation of how each cost element falls within the costs established by §§ 56-577 and 56-583 of the Act.

Staff should then have an opportunity to review the compliance plans and submit the findings of its review and evaluation to the Commission for further consideration.

#### **Determination of market-based costs**

Upon review of the utilities' compliance plans and finalizing the necessary rules to govern these programs, the Commission is to establish the methodology to determine market-based costs. The statute defines market-based costs as "(i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission line losses, and ancillary services, and (iii) a reasonable margin." The statute further directs that the methodology shall be consistent with the goals of promoting the development of effective competition and economic development within Virginia and ensuring that neither incumbent utilities nor retail customers not choosing alternative energy supply are adversely affected.

This charge to the Commission sets the stage for the issues discussed earlier regarding what costs should be recovered by the utility and how such costs should be distributed among those participating in the exemption programs. While the statute seems to limit costs to those specifically related to the procurement of electric energy, it also provides that the utility and non-participating consumers should not be harmed. This report identifies some of the cost components discussed among the work group. Any such costs deemed necessary by the utilities should be clearly described in their proposed compliance plans for further consideration by Staff or this Commission. The final determination of includable costs should be addressed by the Commission in its consideration of the individual utility compliance plans.

## **Conclusions and Recommendations**

This report presents discussion and issues regarding the Staff's proposed Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges. The Staff recommends that the Commission adopt these proposed rules for the limited duration of such exemption programs as an addition to the existing and enforceable Rules Governing Retail Access To Competitive Energy Markets ("Retail Access Rules").

The Staff recommends that:

1. the proposed rules governing exemptions to minimum stay requirements and wires charges be approved;
2. the exemption programs apply to investor owned electric utilities imposing minimum stay requirements or wires charges;
3. the Commission take no action directing the electric cooperatives to implement the exemption programs until such time as the General Assembly makes it clear that the electric cooperatives must offer them;
4. the investor owned electric utilities submit compliance plans to identify and quantify such elements of costs the utility deems necessary to implement these programs according to the proposed rules;
5. the investor owned electric utilities clearly communicate to consumers the details of the approved programs, including the potential risks and benefits of customer participation;

6. the investor owned electric utilities develop a manual work-around solution to initially implement these programs to minimize any development costs;
7. any threshold for affected aggregated load be set at zero;
8. Staff be charged with review and evaluation of the investor owned electric utility compliance plans and be required to submit its findings for further Commission consideration prior to finalizing the methodology to be used to determine market-based costs; and
9. the Commission find that the pricing methodology used in these programs not be precedential for future default service pricing.

**APPENDIX A**

**PROPOSED RULES GOVERNING EXEMPTION  
PROGRAMS REGARDING MINIMUM STAY REQUIREMENTS  
AND WIRES CHARGES**

Chapter 313.

RULES GOVERNING EXEMPTIONS TO  
MINIMUM STAY REQUIREMENTS AND WIRES CHARGES

20 VAC 5-313-10. Applicability.

A. The existing Rules Governing Retail Access To Competitive Energy Services of 20 VAC 5-312 et. seq. remain enforceable unless further qualified by the following additional rules.

B. These transitory regulations are promulgated pursuant to the amended provisions of the Virginia Electric Utility Restructuring Act (§ 56-577 E and § 56-583 of the Code of Virginia). This chapter applies to suppliers of electric services including investor owned local distribution companies and competitive service providers, and are in addition to the existing rules of 20 VAC 5-312 et. seq. The provisions in this chapter shall be applicable to the provision of generation service to the qualifying customers electing exemption to the current minimum stay provisions or to payment of the current wires charges. Rules applicable to the minimum stay exemption program shall remain in force until the termination of capped rates as provided under statute or State Corporation Commission order. Rules applicable to the offering of the wires charges exemption program shall remain in force until the earlier of July 1, 2007 or the termination of any wires charges.

20 VAC 5-313-20. Exemption to minimum stay provisions.

A. This section applies to an investor owned electric local distribution company imposing *minimum stay provisions* on certain customers as applicable under 20 VAC 5-312-80 Q and 20 VAC 5-312-80 R and to competitive service providers serving such customers.

B. An investor owned electric local distribution company shall offer any customer with an annual peak demand of 500 kW or greater that returns to the service of the local distribution company the option to accept the service at the established capped rates and abide by the current minimum stay requirements or to accept the service at market-based costs without the obligation of a minimum stay requirement.

C. The investor owned electric local distribution company shall provide written notice, in a clear and conspicuous manner, as approved by the State Corporation Commission to qualified customers of the options identified in subdivision B of this subsection.

D. The investor owned electric local distribution company shall employ the methodology to determine its market-based costs as provided in 20 VAC 5-313-40 of this chapter and approved by the State Corporation Commission in Case No. PUE-2004-00068 for any customer electing such option and subsequently returning to the local distribution company.

20 VAC 5-313-30. Exemption to wires charges.

A. This section applies to an investor owned electric local distribution company imposing wires charges on its customers, except those customers participating in pilot programs approved by the State Corporation Commission in Case No. PUE-2003-00118, and to competitive service providers serving such customers.

B. The investor owned electric local distribution company shall offer large industrial customers or large commercial customers, as well as any group of customers of any rate class aggregated together, subject to the demand criteria of subsection E of this section and the participation limits of subsection H of this section, and upon the customer's notice to participate at least 60 days' in advance, the option to purchase retail electric energy from licensed competitive service providers without the obligation to pay any wires charges imposed by the utility in exchange for the customers' agreement to pay market-based costs upon any subsequent return to service of the local distribution company.

C. The investor owned electric local distribution company shall provide written notice, in a clear and conspicuous manner, as approved by the staff of the State Corporation Commission, to qualified customers of the options identified in subsection B of this section and associated risks, particularly the customer's inability to ever return to service of the local distribution company at capped rates.

D. The investor owned electric local distribution company shall employ the methodology to determine its market-based costs as provided in 20 VAC 5-313-40 of this chapter and approved by the State Corporation Commission in Case No. PUE-2004-

00068 for any customer electing such option and subsequently returning to the local distribution company.

E. An aggregator electing to serve a group of electric customers and acting on behalf of each customer and electing the option offered through subsection B of this section, shall do so on behalf of its total aggregated load.

F. A contract of an aggregator and a competitive service provider serving such qualified customers shall contain a clear and conspicuous caption: "**CUSTOMER'S RIGHT TO EXEMPTION OF WIRES CHARGES**," in bold face type of a minimum size of ten points, disclosing any wires charges imposed by the local distribution company, including options to exempt such payment, and associated risks to exercise such options, including the inability to ever return to service of the local distribution company at capped rates.

G. An investor owned electric local distribution company is entitled to 60 days' notice prior to the return to service of a qualified customer.

H. The election to be exempt from any wires charges is available to the first 1,000 MW or 8.0% of the investor owned electric local distribution company's prior year Virginia adjusted peak-load.

I. Such exemption provisions are enforceable until the earlier of July 1, 2007, or the termination of any imposed wires charges, while the inability to return to capped rate service remains indefinitely upon exercising this option.

20 VAC 5-313-40. Methodology to determine market-based costs.

The following elements shall be considered to determine the appropriate market-based costs applied to certain customers electing to exempt the minimum stay requirements or wires charges:

1. Actual incremental energy expenses of procuring such electric energy based on real-time hourly prices calculated and published by the respective RTO for the appropriate price zone of the local distribution company;

2. Actual incremental capacity expenses of procuring such electric capacity based on prices calculated and published by the respective RTO for the currently defined capacity market;

3. Incremental administrative and incremental transaction costs associated with procuring such energy, including but not limited to:

- a. Costs of transmission line losses;
- b. Costs of ancillary services; and

4. A reasonable margin to provide the service deemed justifiable by the State Corporation Commission.

## **APPENDIX B**

### **ORGANIZATIONS REPRESENTED ON THE STAFF WORK GROUP**

### **Organization Name**

American Electric Power - APCo  
Allegheny Power  
Commonwealth Energy Corp.  
Conectiv Power Delivery  
Dominion Retail  
Dominion Virginia Power  
New Era Energy  
Direct Energy Services  
Strategic Energy  
Northern Virginia Electric Cooperative  
Old Dominion Electric Cooperative  
Office of Attorney General  
Old Mill Power Company  
Rappahannock Electric Cooperative  
Shenandoah Valley Electric Cooperative  
TXI-Chaparral  
VA-MD-DE Association of Electric Cooperatives  
Virginia Committee for Fair Utility Rates  
Virginia Department of Mines, Minerals, & Energy  
Washington Gas Energy Services

Written comments submitted by participants are located at:  
[http://www.state.va.us/scc/division/eaf/comments\\_minimumstay.htm](http://www.state.va.us/scc/division/eaf/comments_minimumstay.htm)